IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.233 of 2007

Dhan Rusi Driver ...Applicant
vs.
Parviz Dadabhai Zaiwala ...Respondent

Mr.Amardev Uniyal for the Applicant
Mr.A.J.Joshi for the Respondent.

CORAM: A.S.OKA,J.
DATE : JUNE 19, 2007.

P.C.:

1. Heard learned Advocates for the parties. The Revision Applicant is the tenant and the Respondent is the landlord. A suit for eviction was filed in the year 1999 by the Respondent under the provisions of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (hereinafter referred to as the said Act of 1947). The Trial Court framed various issues. The grounds of eviction pleaded in the suit by the Respondent were arrears of rent, bonafide requirement as well as the acquisition of suitable residence. The Trial Court dismissed the suit. The Respondent preferred an Appeal before the District Court. By the impugned Judgment and Decree, the Appellate Court passed a decree on the ground of default.

2. The submission of the learned Advocate for the Revision Applicant is that the Applicant-tenant had complied with the provisions of sub section 3 of section 12 of the said Act of 1947 by depositing the entire arrears of rent and permitted increases together with interest at the rate of 9% p.a. The learned Advocate for the Revision Applicant submitted that the Revision Applicant was entitled to a relief against forfeiture

under sub section 3 of secation 12 of the said Act of 1947. He has placed on record a chart showing amounts due and payable by the Revision Applicant and the details of the amounts deposited by the Revision Applicant in the Trial Court. The learned Advocate for the Respondent has also placed on record a chart showing deposits of various amounts and he submitted that no compliance was made by the Respondent with requirement of sub section 3 of section 12 of the said Act of 1947.

3. My attention has been invited to findings recorded in paragraph 10 of the Judgment of the Appellate Court. What is incorporated in paragraph 10 of the Judgment does not appear to be consistent with the charts submitted by both the parties before this Court. It is obvious that the Appellate court has not at all considered the issue regarding compliance with sub section 3 of section 12 of the said Act of 1947 in its proper perspective. Considering the fact that this issue requires appreciation of factual aspects and the consideration of the record of the Trial Court regarding deposits made by the Revision Applicant, the only option open is to set aside the decree of the Appellate Court and to direct the Appellate Court to rehear the Appeal and to record proper findings.

4. Hence, I pass the following order :

i) Impugned Judgment and Decree dated 16th August 2006 is quashed and set aside and Regular Civil Appeal No.41 of 2003

is restored to file of the Appellate Court.

ii) Parties are directed to appear before the learned Additional District Judge, Palghar at 11.00 a.m. on 6th August 2007 for fixing the schedule of hearing.

iii) It is made clear that the Appellate court is not required to issue notice of the date fixed for hearing of the Appeal to the parties.

iv) The Appellate Court will hear and decide the Appeal in the light of the observations made in this Judgment as expeditiously as possible and preferably on or before 31st December 2007.

v) All contentions of the parties on merits of the pending Appeal are kept open.

vi) Till the Appeal is decided as aforesaid, the Revision Applicant will not create any third party interests and will not part with possession of the suit premises in favour of any third party and will keep on depositing the amount equivalent to monthly rent with the Trial Court.

vii) Revision Application is partly allowed in above terms with no order as to costs.

viii) Parties and the concerned Court to act upon

authenticated copy of this order.

JUDGE